

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ANDRE J. TWITTY,

Plaintiff,

vs.

**E.A. STEPP, TERRY S. BAKKE, DR.
LEE, PHYSICIAN ASST. CAIRDS, G.L.
HERSCHBERGER, N.L. CONNER,
ASSOCIATE WARDEN NITCHOLS,
JUDITH THARP, HEATH SERVICE
ADMINISTRATOR OXFORD,
ASSOCIATE WARDEN BEZY,
PHYSICIAN ASSISTANT MILLER,**

Defendants.

No. 03-CV-779-DRH

ORDER

HERNDON, District Judge:

On January 20, 2006, this Court entered an order adopting a Report and Recommendation issued by Magistrate Judge Phillip Frazier and dismissing several Defendants from this action. (Doc. 80.) After that order, only one of Plaintiff's claims remained viable: a claim against a Defendant with the surname "Carids" who has still not been positively identified. (*Id.*) In its order, the Court also revoked Plaintiff's pauper status and directed him to pay the filing fee of \$150 by February 18, 2006. (*Id.*)

Based on Plaintiff's failure to pay the fee, this Court entered an order on March 10, 2006 asking Plaintiff to show cause why this action should not be

dismissed. (Doc. 89.) In response, Plaintiff did not pay the filing fee, but rather reasserted his argument that his pauper status should not have been revoked. (Doc. 92.) Plaintiff still has not paid the filing fee.

While this was happening, Plaintiff appealed the Court's January 20th order. (Doc. 84.) Ordinarily, it should be pointed out, the filing of an appeal divests a district court of jurisdiction to proceed on a case. Where an issue is ancillary to the question on appeal, however, a district court has jurisdiction to consider it. *See May v. Sheahan*, 226 F.3d 876, 879 (7th Cir. 2000); *Kusay v. United States*, 62 F.3d 192, 194 (7th Cir. 1995). Because this Court's January 20th order did not dismiss Plaintiff's claim against Carids, such is the case here.

Therefore, because Plaintiff has failed to pay the filing fee in this matter, the Court **DISMISSES** his sole remaining claim against Defendant Carids without prejudice.

IT IS SO ORDERED.

Signed this 11th day of May, 2006.

/s/ David RHerndon
United States District Judge